

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
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F13d



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49th day: 11/17/03  
Staff: MW-SC  
Staff report prepared: 10/16/03  
Hearing date: 11/07/03  
Hearing item number: F13d

## APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

**Appeal number** .....A-3-PSB-03-100, Guild SFR Addition  
**Applicants** .....Thomas Guild  
**Appellant**.....Bruce McFarlan  
**Local government** .....City of Pismo Beach  
**Local decision** .....Approved with conditions on September 16, 2003  
**Project location** .....101 Indio Drive, Pismo Beach, San Luis Obispo County (APNs 010-205-007).  
**Project description**.....841 square foot addition to an existing single-family residence on a blufftop lot in the Sunset Palisades Planning Area.  
**File documents**.....Pismo Beach Certified Local Coastal Program (LCP); Pismo Beach Coastal Development Permit 03-0125.  
**Staff recommendation** ...No Substantial Issue

### **I. Recommended Findings and Declarations for No Substantial Issue:**

On September 16, 2003, the City of Pismo Beach approved a Coastal Development Permit for an 841 square foot addition to an existing blufftop home at 101 Indio Drive, on a 9,400 square foot parcel in the Sunset Palisades Planning Area of the city. The addition is to the front of the house in an area between the existing house and Indio Drive and thus, does not affect the house's existing setback from the bluff edge. (City approval and location map attached as Exhibit 1). An appeal of this decision filed with the Coastal Commission challenges the Planning Commission and City Council action to approve the addition because the appellant contends no development can be approved on the site because there is currently an unauthorized gunite wall and stairway down the bluff on this parcel. The appeal contends that the unpermitted development is an illegal non-conforming use of the site, which must be cleared up prior to approval of any further development such as the approved addition to the home. The submitted reasons for appeal are attached to this report as Exhibit 2.

Staff recommends that the Commission determine that the appeal raises **no substantial issue** regarding the project's conformance to the Pismo Beach certified LCP.



**California Coastal Commission**  
**November 7, 2003 Meeting in San Pedro**

Staff: M. Watson Approved by:

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**1. Project Conformance with the Certified LCP.** The City's approval includes an 841 square foot addition to an existing 2,284 square foot, single-family residence on a 9,400 square foot blufftop lot in the Sunset Palisades Planning Area. The existing residence is a legal conforming structure. The approved addition will be located landward of the existing house and is conditioned to meet the 100-year bluff retreat setback and all other yard setbacks. It is consistent with the City's R-1 standards for size, height, lot coverage, parking and all other similar R-1 regulations. The addition of 841 square feet to the existing single-family residence is compatible with the size and scale of existing nearby residences. Thus, the City's approval of the addition is consistent with the certified LCP and does not raise a substantial issue.

**2. Non-Conforming Structure.** Appellant contends the City shouldn't have approved the addition to the existing single-family residence because there is unpermitted development on the coastal bluff that causes all development on the site to be considered non-conforming. As defined in Section 17.118.010 of the LCP, a non-conforming structure is:

*A structure which was lawfully erected prior to the adoption of this ordinance but which, under this ordinance does not conform with the standards prescribed in the regulation for new development for the district in which it is located, including, without limitation, setbacks, size, height, parking or similar regulations.*

The unpermitted development that is the subject of the appellant's claim includes a private stairway down the bluff and gunite facing of the bluff. The appellant claims that the certified LCP contains policies prohibiting construction of private stairways down the bluff and placement of any shoreline armoring along the bluffs without a coastal development permit. Construction of the gunite facing occurred in 1986 and the stairway was constructed sometime thereafter, also without a CDP. The appellant contends that the unpermitted development creates a non-conformity across the entire site including the residential structure, and that the addition to the existing residence should not be approved until the unpermitted development is either removed or permitted.

Although the unpermitted development may very well be a violation subject to an enforcement action, the seawall and stairway do not qualify as legal, non-conforming structures. The structures were not lawfully erected prior to the adoption of the City's ordinance, but were, in fact, constructed after the entire LCP was certified and coastal permitting authority had been transferred to the City. Furthermore, the existence of unpermitted development in and of itself does not create a non-conformance issue for other structures located elsewhere on the site. Non-conformities are created when standards change and existing structures or uses are no longer consistent with the newer standards. As noted above, the existing residence is a legal, conforming structure and the City-approved addition complies with the Sunset Palisades Planning Area standards and regulations establishing setbacks, height, floor area, lot coverage, etc. The City's LCP does not preclude it from approving new development to legal conforming structures when it is found to be consistent with the standards for new development for the district in which it is located. Therefore, existing unpermitted development may not comply with the standards as alleged by the appellant, but they are not non-conforming and they are not the subject of the



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City's approval. Thus, the City's approval does not raise a substantial issue regarding the project's consistency with certified LCP standards for residential development in the Sunset Palisades Planning Area district.

**II. Recommended Motion and Resolution**

**MOTION:**

*I move that the Commission determine that Appeal No. A-3-PSB-03-100 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

**STAFF RECOMMENDATION:**

*Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.*

**RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

*The Commission finds that Appeal No. A-3-PSB-03-100 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

**III. Appeal Procedures:**

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is between the first public road and the sea.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified



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local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea and thus, this additional finding would need to be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

